



NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1110

Removal of Freedom of Information Act Regulation Issued by National Foundation on the Arts and the Humanities

AGENCY: National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking rescinds the National Foundation on the Arts and the Humanities' (the "Foundation") regulations implementing the Freedom of Information Act ("FOIA"). These regulations are obsolete because each of the Foundation's constituent agencies—the National Endowment for the Arts ("NEA"), the National Endowment for the Humanities ("NEH"), the Institute of Museum and Library Services ("IMLS"), and the Federal Council on the Arts and the Humanities ("FCAH")—either have adopted their own, agency-specific regulations, or are not required to implement Freedom of Information Act regulations.

DATES: The public comment period for the proposed rule opens on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3135-AA26, by any of the following methods:

- (a) Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

(b) E-mail: generalcounsel@arts.gov. Include RIN 3135-AA26 in the subject line of the message.

(c) Mail: National Endowment for the Arts, Office of General Counsel, 400 7th Street SW, Second Floor, Washington, DC 20506.

(d) Hand Delivery / Courier: National Endowment for the Arts, Office of the General Counsel, 400 7th Street SW, Second Floor, Washington, DC 20506.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (3135-AA26) for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to 400 7th Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St., SW, Washington, DC 20506, Telephone: 202-682-5418.

SUPPLEMENTARY INFORMATION:

1. Background

The Foundation operates under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*), and consists of the NEA, NEH, IMLS, and FCAH (collectively, the “Foundation’s constituent agencies”).

The Foundation’s FOIA regulations located at 45 CFR 1100 are now obsolete. The NEA, NEH, and IMLS have each adopted their own, agency-specific regulations. On February 27, 2019, the NEA promulgated FOIA regulations to 45 CFR Chapter XI, Subchapter B (45 CFR part 1148), which only apply to the NEA, effectively superseding the Foundation’s FOIA regulations and rendering them duplicative. NEH and IMLS had previously added NEH- and IMLS-specific FOIA regulations to 45 CFR, Subchapters D and E (45 CFR parts 1171 & 1184), respectively, which replaced the Foundation’s FOIA regulations with respect to NEH and IMLS. FCAH relies upon the NEA and NEH for its

administration and does not maintain any systems of records of its own; thus, any requests for information or documents would be better directed to the other two constituent agencies of the Foundation to obtain the same information.

Accordingly, the Foundation's constituent agencies propose rescinding the Foundation's regulations located at 45 CFR 1100.

2. Compliance

Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only "significant" proposed and final rules are subject to review under this Executive Order. "Significant," as used in E.O. 12866, means "economically significant." It refers to rules (1) with an impact on the economy of \$100 million or more or that adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public safety or health, or State, local or tribal Governments or communities; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; or (4) raised novel legal or policy issues.

This proposed rule would not be a significant policy change, and OMB has not reviewed this proposed rule under E.O. 12866. We have made the assessments required by E.O. 12866 and determined that this proposed rulemaking: (1) will not have an effect of \$100 million or more on the economy and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (4) does not raise novel legal or policy issues.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988. Specifically, this proposed rule is written in clear language designed to help reduce litigation.

Paperwork Reduction Act of 1995 (“PRA”)

This proposed rule does not impose an information collection burden under the PRA. This proposed rule contains no provisions constituting a collection of information under the PRA.

Regulatory Flexibility Act of 1980 (“RFA”)

This proposed rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Unfunded Mandates Reform Act of 1995 (“UMRA”)

This proposed rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

Executive Order 13132 (Federalism)

This proposed rulemaking does not have federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” The NEA has determined that this proposed rulemaking will not have federalism implications within the meaning of E.O. 13132.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Executive Order 12630: Takings

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

List of Subjects in 45 CFR Part 1110

Administrative practice and procedure, Archives and records, Freedom of information.

For the reasons stated in the preamble, and under the authority of 5 U.S.C. 552, the NEA, NEH (for itself and on behalf of FCAH, for which NEH provides legal counsel), and IMLS propose to amend 45 CFR Chapter XI Subchapter A as follows:

PART 1100 – [Removed]

1. Remove Part 1100.

Valencia Rainey,

Acting General Counsel, National Endowment for the Arts.

Michael P. McDonald,

General Counsel, National Endowment for the Humanities.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.